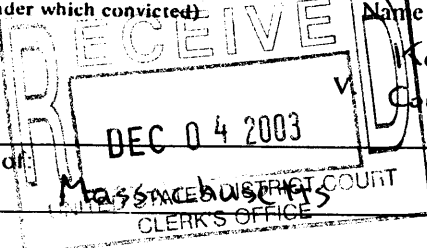


AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District <u>Massachusetts</u>	
Name <u>Jose Ramirez</u>		Prisoner No. <u>W-66225</u>	Case No. <u>98-1676</u>
Place of Confinement <u>North Central Correctional Institution, Gardner, Massachusetts</u>			
Name of Petitioner (include name under which convicted) <u>Jose Ramirez</u>		Name of Respondent (authorized person having custody of petitioner) <u>Kathleen M. Dennehy, Acting Commissioner, Mass. Dept. of Corrections</u>	
The Attorney General of the State of <u>Massachusetts</u>		<div style="text-align: center;">  </div>	

**PETITION**

**03-40281-1**

- Name and location of court which entered the judgment of conviction under attack Hampden County Superior Court, Hall of Justice, 50 State Street, PO Box 559, Springfield, MA 01102
- Date of judgment of conviction December 21, 1998
- Length of sentence 15 years to 15 years and 1 day
- Nature of offense involved (all counts) trafficking in a controlled substance, cocaine (200+ grams)

5. What was your plea? (Check one)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Not applicable.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial?  
Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

AO 241 (Rev. 5/85)

## 9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result Judgement affirmed.
- (c) Date of result and citation, if known June 14, 2002. 55 Mass. App. Ct. 234 (2002)
- (d) Grounds raised Violation of right to confront witnesses; Miranda violation; prosecutorial misconduct; sufficiency of the evidence; errors in jury instructions
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Massachusetts Supreme Judicial Court
- (2) Result Application for further appellate review denied.
- (3) Date of result and citation, if known September 6, 2002, 437 Mass. 1108 (2002)
- (4) Grounds raised Violation of right to confront witnesses; Miranda violation.
- (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
- (1) Name of court Not applicable.
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

## 10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

## 11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Hampden County Superior Court
- (2) Nature of proceeding Motion for New Trial
- (3) Grounds raised errors with the verdict slip and errors in the jury instructions

AO 241 (Rev. 5/85)

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result Motion for New Trial denied

(6) Date of result March 16, 1999

- (b) As to any second petition, application or motion give the same information:

(1) Name of court Not applicable.

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

- (c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐ Not applicable

- (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Not applicable.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: The introduction of hearsay evidence violated the defendant's Sixth Amendment right to confront the witnesses against him.

Supporting FACTS (state *briefly* without citing cases or law): The prosecution relied on improperly admitted hearsay evidence (business cards and a health club receipt) to connect the defendant to New York. Prior police testimony had established New York as the likely source of the drugs. The evidence was admitted over the defendant's objection. The Appeals Court recognized the error, but failed to apply the proper standard of review for constitutional violations.

- B. Ground two: The introduction of the defendant's statement violated the privilege against self-incrimination.

Supporting FACTS (state *briefly* without citing cases or law): The arresting officer knew that the defendant had given a false name at a prior arrest. Prior to reading the defendant his Miranda rights (during the instant arrest), the officer asked the defendant his name. The defendant provided a false name and that fact was used against him at trial. As the officer should reasonably have known that the defendant would give a false name, the statement does not fall within the booking exception and should have been suppressed.

AO 241 (Rev. 5/85)

C. Ground three: Not applicable.Supporting FACTS (state *briefly* without citing cases or law):D. Ground four Not applicable.Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

Not applicable.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mark G. Mastroianni, 101 State Street,Springfield, MA 01103.(b) At arraignment and plea Mark G. Mastroianni (address as above),

AO 241 (Rev. 5/85)

(c) At trial Mark G. Mastroianni (address as above).(d) At sentencing Mark G. Mastroianni (address as above).(e) On appeal Wendy Sibbison, 158 Main Street, Suite 5,  
Greenfield, MA 01301.(f) In any post-conviction proceeding Mark G. Mastroianni (address as above).(g) On appeal from any adverse ruling in a post-conviction proceeding Wendy Sibbison  
(address as above).

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Alan C. M.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/03/03

(date)

Jose Ramirez

Signature of Petitioner